No. 93-873

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

THE UNIVERSITY OF TENNESSEE
PETITIONER

v.

DENNIS ALLEN FAULKNER
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF FOR DENNIS ALLEN FAULKNER IN OPPOSITION

DENNIS ALLEN FAULKNER
114 DREGER AVE
HUNTSVILLE, ALABAMA 35801

QUESTION PRESENTED

1. Whether a state entity that has sovereign immunity within its own borders can cross over to another state, conduct significant business in that state and in doing so, act irresponsibly then return within its own confines and claim sovereign immunity from breach of contract and tort actions brought on from those irresponsible actions in the other state.

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OPINION BELOW

The opinion of the Supreme Court of Alabama has not been released for publication. A copy of the slip opinion is provided in the Petitioner's brief, Appendix 1a-11a.

JURISDICTION

The judgement of the Supreme Court of Alabama was entered on August 28, 1992. Petitioner filed an application for rehearing on September 11, 1992. The Supreme Court of Alabama denied the application for rehearing on September 3, 1993. The petition for a writ of certiorari was filed on December 2, 1993. The jurisdiction of this court is invoked by the petitioner under 28 U.S.C. 1257 (1988).

STATEMENT

In late March of 1991, I was notified by phone from the Dean of the Graduate School at the University of Tennessee (University)

that they were going to revoke my Doctor of Philosophy degree that the Board of Trustees from that University had conferred upon me in May of 1990. The University's agent said that this revocation could proceed in two ways, I could turn it in voluntarily, or they would take it from me and that I would face public embarrassment in the process. The University was unwilling to talk with me about it further as they told me "You would be wasting your time".

I sought legal help immediately after the phone call. I filed suit in the Circuit Court of Madison County in Alabama on May 3, 1991 for Breach of Contract, Fraud, and Estoppel. Everything done on my Dissertation was under the guidance, direction, and approval of my Major Professor and dissertation committee. Unbeknownst to me at the time, allegations of irregularities in my draft dissertation were being discussed between the Dean of the Graduate School (at the University of Tennessee Space Institute), a University Vice President, and the Department Head of the Department of which I was enrolled, before I defended my dissertation and at least two months before I graduated. These alleged irregularities are now what the University calls plagiarism. What is critical to my argument is the fact that University officials were knowledgeable about the contents of my dissertation prior to the conferring of the degree and were culpable in their actions by their agents of the University. The alleged irregularities were discussed in detail with my major professor and apparently were found acceptable to the University as they allowed the conferring of the degree some two months later.

As the defense of the dissertation was a posted open forum, no member of the University (other than the dissertation committee members) were present to challenge the contents of the dissertation. Although specific irregularities were brought to the attention of these officials, no one, challenged the contents for appropriateness.

The timeliness of the charges brought almost a year later directly correlates with an apparent extorsion attempt by a disgruntled student threatening to expose the University's alleged corruption to include the mishandling of my dissertation and others unless they relieved that person of a $35,000.00 loan debt and cleaned up that person's academic record. The University, in an apparent attempt to cover up, has bowed in to that person's demands.

ARGUMENT

The merits of why the Alabama Supreme Court's ruling on this case should stand, are appropriately justified in their ruling. the rest of this argument will concentrate on some of the misstatement of facts or misleading information in UT's brief.

The University states on Page 5 para 2 that "Later, the University discovered that Faulkner's dissertation was essentially ...". The term later infers after graduation. The University knew well before my graduation how my dissertation was constructed. They also leave out the fact that I was instructed to prepare my dissertation as it now stands by my faculty advisor, who was also a member of the Graduate Council at the University, solely

responsible for establishing the requirements for fulfilling the degree.

The University claims on page 11 para 1 that the Alabama judiciary will supplant the University as the final arbiter of my degree. This is only true if it is shown that the University is responsible for the allegations they are charged with. The Alabama Supreme Court has taken into consideration the adverse effects that this ruling would have on Alabama businesses and academia outside the boundaries of the state. It is not trying to interfere with the granting of degrees, but rather, it addresses that businesses (including academia) are subject to the judiciary processes within the State of Alabama should those parties show impropriety in their contractual obligations. Likewise, Alabama businesses and academia would be subject to the judicial processes of any other state should it be determined that these institutions were conducting business improperly. The citizens of the State of Alabama must be protected and allowed redress within the sovereign state of Alabama.

The University claims on page 11 para 1 that my suit challenges UT's authority to grant degrees. My suit addresses the responsibility of University employees and their directed instructions to students who contract (through fees paid) for sound accepted advice.

The University expounds on page 11 footnote 8 why a degree can be rescinded. I, like the University of Boston in the case of Dr. Martin Luther King Jr., believe that the revocation of a degree is

"an absurd and unheard of process," however I am more concerned with the University's failure to examine the entire facts surrounding the academic standards in question and the responsiveness of the school administrators who had specific knowledge regarding the contents of the dissertation prior to the acceptance by the graduate school and the conference of the degree.

When academic institutions fail to act responsibly there is very little that a private citizen can do. State education institutions are in most cases "above the law." In this case they are trying to go a step further and invade another state, act recklessly, and when accused of doing so, retreat to their borders claiming sovereign immunity. An analogous situation is when a foreign diplomat in our country is accused of a crime and then claims diplomatic immunity. Again, if the University is innocent of any wrong doing, then the judge and jury will decide on their behalf in any state of the union.

Finally, I worked very hard for the degree in question. I studied for 6 months to pass my qualifying and comprehensive exams and essentially missed the first three years of my second daughters life while taking classes and researching my dissertation topic. The revocation of this degree and its associated title of "Doctor" due to the allegations of plagiarism will brand me for the rest of my life. The University's tactics of damage control through back door dealings and forum shopping should not be allowed when a person's reputation is at stake. The Petitioner's dislike of a level playing field and trial by jury as guaranteed by Amendment

VII of the Constitution of the U.S. does not justify further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DENNIS ALLEN FAULKNER

RESPONDENT

DECEMBER 1993

APPENDIX

APPENDIX

IN THE CIRCUIT COURT
OF MADISON COUNTY, ALABAMA

Civil Action No. CV 91-960B

DENNIS ALLEN FAULKNER
Plaintiff,

v.

THE UNIVERSITY OF TENNESSEE
Defendant,

STATE OF TENNESSEE
COUNTY OF COFFEE

AFFIDAVIT OF DR. WALTER FROST

Before me the undersigned officer, authorized by law to administer oaths in and for said county and state, personally appeared Walter Frost, who being known to me and being by me first duly placed under oath, does swear and depose as follows:

My name is Walter Frost, Ph.D. I am a retired professor of Mechanical Engineering and Engineering Science and Mechanics at the University of Tennessee Space Institute ("UTSI"), headquartered in Tullahoma, Tennessee. I make this affidavit upon my own personal knowledge, and would so testify if called upon to do so in an open court.

I was a professor of UT at UTSI, and served as Dennis Faulkner's "major professor" (i.e., his advisor and chairman of his authorized committee for the UT doctorate program) during his enrollment in the UT graduate program at UTSI. Graduate student programs have been conducted by UTSI in the Huntsville, Alabama area for many years prior to and during Dennis Faulkner's enrollment at UTSI. Graduate programs offered by UTSI are part of the University of Tennessee graduate school and all courses offered by UTSI are approved by the graduate school and listed in the UT catalog.

For a number of years prior to Dennis Faulkner's enrollment at UTSI, and since then up to the present time, UT, through UTSI, has had a number of graduate students in the Huntsville, Alabama area. This interaction occurs because of an agreement between UTSI and

NASA Marshall Space Flight Center. As approved and encouraged by the Dean of UTSI, I and other professors have assisted UT, through UTSI, in the recruitment of students in the technical community centered in the Huntsville, Alabama area, specifically those who are employed by the United States Department of the Army or by NASA, for enrollment in the UT graduate programs.

With approval of the UTSI administrations, I have personally taught classes in the Huntsville, Alabama area. I also have personal knowledge that Dennis Faulkner took classes in the Huntsville, Alabama area while working on his degree through UTSI. A substantial number of other students in the Huntsville, Alabama area, besides Dennis Faulkner, have been enrolled in UT graduate programs. Classes are taught in Huntsville, Alabama by UTSI personnel through video tapes, which are shipped from both Knoxville and Tullahoma, Tennessee to Huntsville and are viewed by those students enrolled in the UT programs. UTSI has taught classes "live" in Huntsville by a number of professors, including myself. Dennis Faulkner took classes both by video tape and "live" in Huntsville, Alabama during his enrollment in the UT doctoral program which culminated in the award of his Ph.D. degree. Dennis Faulkner and others, to my personal knowledge, conducted a major portion of their dissertation's work in Huntsville, Alabama as part of a UT graduate program.

UTSI has a number of contractual business arrangements with NASA and the Army in Huntsville. For example, UTSI participates in a joint venture with Calspan, called CASP, which was recently awarded a multi-million dollar contract with NASA in Huntsville.

/s/ Walter Frost
WALTER FROST

Sworn to and subscribed before me this 14 day of June, 1991.

/s/ Alta Jean Jones
Notary Public
My Commission Expires:
April 6, 1992

[SEAL]

IN THE CIRCUIT COURT
OF MADISON COUNTY, ALABAMA

Civil Action No. CV 91-960B

DENNIS ALLEN FAULKNER
Plaintiff,

v.

THE UNIVERSITY OF TENNESSEE
Defendant,

STATE OF ALABAMA
COUNTY OF MADISON

AFFIDAVIT OF DR. ROBERT E. TURNER

Before me the undersigned officer, authorized by law to administer oaths in and for said county and state, personally appeared Dr. Robert E. Turner, who being known to me and being by me first duly placed under oath, does swear and depose as follows:

My name is Robert E. Turner, Ph.D P.E. I am an Associate professor part time of Engineering Science and Mechanics at the University of Tennessee Space Institute ("UTSI") in Tullahoma, Tennessee. UTSI is a branch of the University of Tennessee ("UT"). I have personal knowledge of the matters addressed in this affidavit and would so testify if called upon to do so in open court.

I am personally familiar with the programs offered by UT through UTSI in Huntsville, Alabama. I have personally taught "live" classes in Huntsville, Alabama under the auspices of the UTSI graduate school program, as have a number of other professors. I have personally recruited students in the Huntsville, Alabama technical community to enroll in the UTSI graduate program. I am also personally aware that video tapes of lectures are forwarded from Tennessee to Huntsville and are viewed by students in Huntsville, Alabama, as part of the curriculum of UTSI. I have also taken courses in Huntsville through video tapes of lectures sent from UT Knoxville under the auspices of the UTSI graduate school program.

I am personally familiar with Dennis Faulkner's work as a UTSI

graduate school student. He took substantially all of his work in Huntsville, Alabama, both through video tapes and through "live" classroom work. He did his work on his dissertation primarily in Huntsville, Alabama.

A substantial number of students who live in and around Huntsville, Alabama are enrolled in the UT/UTSI graduate programs, and like numbers have been enrolled before, during, and after the period of time in which Dennis Faulkner was enrolled as a UTSI graduate student. The Huntsville, Alabama course offerings are published in the UT graduate school catalog, to my knowledge. Lectures have been conducted for UT Business Management programs in Huntsville, Alabama.

I have personal knowledge that UT, through UTSI, has other direct involvement in the Huntsville, Alabama technical community. For example, UTSI has been a participant and supporter of the Technical and Business Exhibition/Symposium ("TABES") programs offered in Huntsville, Alabama for a number of years. Moreover, the vice-president of UTSI, Dr. Wesley L. Harris, is serving as general chairman for the TABES program in Huntsville, Alabama to be held May 12 through 14 of 1992. That fact was advertised in the brochure for May, 1991 TABES program, as well.

/s/ Robert E. Turner
ROBERT E. TURNER

Sworn and subscribed before me this 14 day of June, 1991.

/s/ Jacquetta L. Hammon
Notary Public
My Commission Expires:
2-8-95

[SEAL]